

nitrogen based compound having a flow rate ratio of the carbon monoxide gas to the to the total flow rate of the reactive gas of 1% to 40%. Such structural features include, for example, having precisely etched areas of 150 nm or less (P3/L9-13, Fig. 9A-9C). The Restriction Requirement has failed to establish that such structural features of claims 3-9 can be produced by either of plasma etching with a chlorine containing gas or ion milling. Accordingly, the Restriction Requirement has failed to establish that the magnetic materials of Group II can be made by a materially different process than the methods of Group I. The Restriction of Group I and Group II is thus improper. Applicant respectfully request withdrawal of the Restriction Requirement.

The Restriction Requirement alleges that restriction between Group II, drawn to magnetic materials, and Group III, drawn to an etching apparatus is proper according to MPEP §806.05(g) because the magnetic materials of Group II may be made by another materially different apparatus, such as by an "ion milling apparatus." However, Applicant submits that the magnetic materials recited in claims 3-9 cannot be made by such an apparatus. For example, the magnetic materials of claims 3-9 exhibit structural characteristics that cannot be obtained by the Restriction Requirement's proposed materially different apparatus.

As discussed above, The magnetic materials of claims 3-9 exhibit structural features as a result of being reactive ion etched with a reactive ion gas of carbon monoxide containing an added gas of a nitrogen based compound having a flow rate ratio of the carbon monoxide gas to the to the total flow rate of the reactive gas of 1% to 40%. Such structural features include, for example, having precisely etched areas of 150 nm or less (P3/L9-13, Fig. 9A-9C). The Restriction Requirement has failed to establish that such structural features of claims 3-9 can be produced by an ion milling apparatus. Accordingly, the Restriction Requirement has failed to establish that the magnetic materials of Group II can be made by a materially

different apparatus than the apparatus of Group III. The Restriction of Group II and Group III is thus improper. Applicant respectfully request withdrawal of the Restriction Requirement.

Applicant also respectfully submits that the subject matter of all claims 1-10 is sufficiently related that a thorough search for the subject matter of any one Group of claims would encompass a search for the subject matter of the remaining claims. Thus, Applicant respectfully submits that the search and examination of the entire application could be made without serious burden. See MPEP §803 in which it is stated that, "if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions" (emphasis added). Applicant respectfully submits that this policy should apply in the present application in order to avoid unnecessary delay and expense to Applicant and duplicative examination by the Patent Office.

Thus, withdrawal of the Restriction Requirement is respectfully requested.

Respectfully submitted,



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